

**IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

CHARLES TONEY,)	
)	
<i>Plaintiff,</i>)	
v.)	
)	
HAMILTON COUNTY, TENNESSEE)	
SHERIFF JIM HAMMOND , Individually)	No. 1:19-cv-00342-MFL-CHS
and as an Employee or Agent of Hamilton)	
County, TN)	Leitman/Steger
BLAKE KILPATRICK , Individually)	
and as an Employee or Agent of Hamilton)	JURY TRIAL DEMANDED
County, TN)	
JOHN DOES I-X , Individually and in their)	
official capacity as Employees or Agents)	
for Hamilton County, TN or any other)	
unknown agency)	
)	
<i>Defendants,</i>)	

**DEFENDANT BLAKE KILPATRICK'S MOTION FOR A DISCOVERY STATUS
CONFERENCE WITH MAGISTRATE JUDGE STEGER**

COMES NOW Defendant Blake Kilpatrick and moves this Honorable Court to set a Discovery Status Conference in this matter to review the current status of discovery completed and to determine whether additional time for discovery is appropriate under the current circumstances. This motion is made pursuant to Fed. R. Civ. P. 16(b).

This motion is being filed due to a series of events that started with a conversation between Plaintiff's counsel, Andrew Clarke, and AUSA Alejandro Abreu¹ yesterday about the Department of Justice (hereinafter DOJ) filing a motion to stay these proceedings pending the investigation currently being conducted by the Federal Bureau of Investigation (hereinafter FBI) into the events

¹ AUSA Alejandro Abreu is assigned to the Northern District of Ohio in Cleveland.

that give rise to this lawsuit. Mr. Abreu and AUSA Elliot Morrison are in charge of this investigation. Additionally, there is currently a motion to stay the discovery deposition of Blake Kilpatrick pending (Doc. 47 & 48).

Counsel for all parties in this matter originally attempted to conduct depositions of all persons who could be identified who witnessed the arrest of Charles Toney. This includes at least three lay witnesses, the Plaintiff, and six law enforcement officers including Defendant Kilpatrick. Among those law enforcement officers were three Hamilton County Sheriff's Deputies, one Chattanooga Police Officer, and two United States Marshalls.² The parties agreed that it is the best practice in this case to depose all witnesses to the event that can be identified from day to day until these witnesses are completed.³ Originally, the parties were going to begin depositions in early February. However, as the beginning date approached, the parties determined that they were unable to locate Shaunessey McClendon and Jeron Williams⁴ and had not been able to determine how to locate one of the Marshalls at the scene.⁵ In addition, counsel had not been able to reach counsel associated with the Marshall's service to determine what steps to take to subpoena a U.S. Marshall. It was also unclear with a pending investigation whether the Marshalls would be available to testify in a deposition.

The parties then scheduled depositions to begin March 29, 2021. Counsel had decided after the last depositions were moved to contact the Civil Division of DOJ in the Eastern District of

² None of the other law enforcement officers have been sued and are only fact witnesses. They are Deputy Jim Usry, Deputy Marty Dunn, Officer Colton Krumrie, Marshall Michael Fugate and Agent Brad Fearn.

³ There are at least three other people who are believed to be witnesses who cannot be identified at this time even though counsel for Kilpatrick and Toney have gone to great effort to do so.

⁴ Potential eye witnesses to the event.

⁵ Per information from the local US Marshall's office, Brad Fearn has left the Service and joined another federal agency in Ohio. The city is unknown.

Tennessee. Loretta Harber responded by email that a *Touhy* affidavit would have to be sent to Alejandro Abreu requesting authority to depose Mr. Fearn and Marshall Fugate. Shortly after that communication, Mr. Abreu called Mr. Clarke. Counsel for Defendant Kilpatrick has also spoken to Mr. Abreu and he advised that he will be filing his motion to stay these proceedings early next week.

Under these circumstances, counsel for Defendant Kilpatrick requests this court set a status conference on discovery and scheduling as soon as possible.

Respectfully submitted,

TIDWELL AND ASSOCIATES, PC

/s/ W.Gerald Tidwell

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